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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 Stephen R.F. Kern, Jr.,

7 Plaintiff,

8 v.

9 James Dzurenda, et al.,

10 Defendants.
11

Case No. 2:19-cv-00721-RFB-DJA

Order

12 Plaintiff sued Defendants after his arm was caught in a sally-port door at the High Desert
13 State Prison where he is an inmate. (ECF No. 1). On February 5, 2021, the Court granted
14 Plaintiff's request to extend the discovery deadline for sixty days to Friday, June 11, 2021. (ECF
15 No. 26). But after Defendant Bryon Bradburn filed his motion for summary judgment on July 12,
16 2021, Plaintiff requested to conduct more discovery. Because the Court finds that Plaintiff has
17 improperly requested to extend discovery and has raised arguments more appropriate to his
18 response to Defendant's motion for summary judgment, it denies his motions. The Court finds
19 these matters properly resolved without a hearing. LR 78-1.

20 Plaintiff filed two "motions for discovery" (ECF Nos. 39 & 41), and a supplement (ECF
21 No. 47) claiming that there is more evidence the Court should consider and apparently asking for
22 leave or additional time to conduct this additional discovery. Throughout his motions, Plaintiff
23 reiterates that the evidence will "raise genuine issues of material facts." (ECF No. 39).
24 Interpreting Plaintiff's first motion as a request to extend the discovery deadline, Defendant
25 responded (ECF No. 40) that Plaintiff's motions failed to meet the excusable neglect standard
26 under Local Rule 26 governing discovery extensions. Interpreting Plaintiff's second motion as a
27 part of his argument in response to the motion for summary judgment, Defendant asserts (ECF
28

1 No. 44) that Plaintiff's lack of diligence undermines his attempt to show that he cannot present
2 facts essential to his opposition.


3 Plaintiff replies (ECF No. 45) and reiterates that the additional discovery is necessary to
4 his case. Plaintiff argues that Defendant should have sought out the information Plaintiff now
5 asks for more time to obtain. This includes a deposition or declaration of the person escorting
6 Plaintiff when his arm got caught, the deposition or declaration of a maintenance worker familiar
7 with the sally port door, video or audio of the incident, an instruction manual for the sally port
8 door, and Plaintiff's medical records. Plaintiff attaches certain discovery materials, including his
9 medical records and grievances, but does not otherwise cite these items in his reply.

10 The Court agrees with Defendant. If Plaintiff is seeking to reopen discovery, his request
11 is not only too late, but also insufficient. Under Local Rule 26-3, any requests for extension made
12 after the deadline has passes must demonstrate excusable neglect. Although Plaintiff asserts
13 difficulties due to his incarceration, limited legal knowledge, with accessing the law library, and
14 obtaining legal resources, he does not explain why he did not serve discovery requests asking for
15 the depositions and evidence he now asserts is necessary.

16 But even if he had demonstrated excusable neglect, Plaintiff's arguments and exhibits are
17 more appropriately raised in his response to Defendant's motion for summary judgment, as
18 Plaintiff himself seems aware by citing Rule 56. (ECF No. 41). Plaintiff continually asserts that
19 there is relevant evidence showing genuine issues of material fact that he has yet to obtain (or
20 seemingly that he has attached to his reply). But, at this stage, Plaintiff's arguments are more
21 appropriately raised under Federal Rule of Civil Procedure 56, not as a discovery motion. The
22 Court thus denies Plaintiff's motions for discovery.

23 **IT IS THEREFORE ORDERED** that Plaintiff's motions for discovery (ECF Nos. 39 &
24 41) are **denied**.

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26 DATED: September 27, 2021

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28 DANIEL J. ALBRECTS
UNITED STATES MAGISTRATE JUDGE